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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,028	02/23/2004	Eric Steven Schindler	005127.00257	3776
22909	7590	07/11/2006		EXAMINER
BANNER & WITCOFF, LTD. 1001 G STREET, N.W. WASHINGTON, DC 20001-4597				PATTERSON, MARIE D
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/783,028	SCHINDLER, ERIC STEVEN	
	Examiner Marie Patterson	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 June 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 64-108 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 64-67, 69-72, 76-83, 85-87, 89-92 and 96-108 is/are rejected.
- 7) Claim(s) 68, 73-75, 84, 88, and 93-95 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 64, 69, 70-72, 76, 78-83, 89-92, and 96-102 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pavesi (5987781).
3. Claims 64-67, 69-71, 76, 78-83, 85-87, 89-91, and 96-108 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Chee (5918383).
4. Claims 64, 69, 76, 77, 83, 89, and 96 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Donzis (4874640).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 77 and 97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavesi in view of either Frachey or Chee.

Pavesi shows a shoe comprising a sealed barrier (11), a foam member (14) bonded to some of the sides of the barrier (counln 4 lines 18-22), and a fluid (air) substantially as claimed except for the material for the barrier. Frachey or Chee teaches the well known and conventional use of polyurethane for barrier elements in footwear. It would

have been obvious to use polyurethane as taught by Frachy or Chee for the barrier in the shoe of Pavesi to provide a durable, inexpensive, and easy to assemble barrier.

Allowable Subject Matter

7. Claims 68, 73-75, 84, 88, and 93-95 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed 6/1/06 have been fully considered but they are not persuasive.

In response to applicants' arguments directed towards Donzis and/or Chee, the fact that the barrier is sealed by a valve does not negate the fact that it is sealed. If the barrier was not sealed it would not retain the fluid inside of it.

In response to applicants' arguments directed towards Pavesi, the barrier is clearly pressurized to place an outward force on the barrier as clearly shown in the figures. The fluid is inherently and clearly pressurized to place an outward force on the barrier/casin. If this were not the case the casing of Pavesi would be shown and collapsed around the foam instead of spaced outwardly therefrom.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (572)272-8300 (**FORMAL FAXES ONLY**). Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.



Marie Patterson
Primary Examiner
Art Unit 3728